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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

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GROUP 3600

Application Number: 10/088,926
Filing Date: March 20, 2002
Appellant(s): KANGAS, TIMO JUHANI

RICHARD J. KATZ
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11 May 2007 appealing from the Office action mailed 5 December 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The First ground of rejection is not presented for review on appeal because the rejection is withdrawn by the examiner: Rejection of claims 1, 8, 9, 11-12 under 35 USC 112, second paragraph.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,794,210

GOLDHABER et al.

09-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6, 8-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldhaber et al. (US 5,794,210).

As per claims 1 and 8, Goldhaber discloses methods for distributing information and services through networks, including the steps of:

composing a piece of information or service to be distributed through a computer or cellular network. See, for example, references to advertisements, products and services, at least Col. 1, lines 15-61.

compiling a list of intended recipients. See at least references to targeting an audience by demographic profiles, for example, Col. 2, lines 35-49. see also references to explicit target audience, as in the Abstract, explicit delineation of target audience, as in Col. 5, line 25-Col. 6, line 2. see also references to demographic routing, at least Col. 5, lines 17-55.

transmitting through the computer or cellular network a preliminary order for crediting accounts associated with the intended recipients. See, for example, references to fixed price information, as in Fig. 2 and related text.

releasing said piece of information or service so that the piece of information or service becomes accessible to the recipients appearing on said list. See, for example, references to transmitting information over a network to target audience, at least Col. 10, lines 8-38.

as a response to an indication of a certain recipient having accessed said piece of information or service, crediting an account associated with said certain recipient. See at least Fig. 10, reference 60(c), showing crediting to an account.

As per claim 2, Goldhaber discloses that crediting an account associated with a recipient may include a substep of identifying an account representing the rights of said certain recipient to use certain services through said network. See, for example, at least references to crediting a consumer's account, at least Col. 6, line 24-Col.7, line 18.

As per claim 3, Goldhaber discloses that crediting an account associated with a recipient may include a substep of identifying an *account* the identifier of which has been intentionally provided by said certain recipient. See, for example, at least references to credit card or bank accounts or specialized accounts provided by a recipient, Col. 7, lines 47-62.

As per claim 4, Goldhaber discloses that releasing said piece of information or service (advertisement, for example) may comprise a substep of indicating to at least part of the recipients appearing on said list that accessing said piece of information or service

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will cause a certain **account** associated with said certain recipient to be credited. See, for example, references to icons that indicate to recipients [selected on the basis of demographics, for example] that accessing the advertisement will cause a user's account to be credited, as in Col. 7, lines 47-61.

As per claim 5, Goldhaber discloses that a step of releasing an advertisement may comprise a substep of transmitting said piece of information or service to a number of subscriber terminals. See, for example, references to target audience, as in claims 1, 4, above. See also references to consumer/subscriber demographic profiles, as in Col. 6, lines 46-67.

As per claim 6, Goldhaber discloses that a step of releasing an advertisement may comprise substep(s) of

storing said piece of information or service to a place which is accessible for subscriber terminals through a network. See, for example, at least Fig. 10, which shows various types of storage devices for storing advertising information that is distributed through network 102.

transmitting to a number of subscriber terminals an indication of said piece of information or service being available at said place. See, for example, at least references to lists of advertisements available to subscriber(s) at subscriber terminals. The indication may be in the form of a thumbnail view that permits a subscriber to select and view particular advertisements, as in Figs. 12, 13 and related text.

As per claims 8-10, Goldhaber discloses various databases and servers:

source of information or services See, for example, references to information services and servers, reference 106.

number of subscriber terminals. See, for example, at least references to consumer computers 104.

means for maintaining accounts associated with certain subscribers. See, for example, at least references to digital cash repository, Fig. 7 and related text.

means for transmitting through the computer or cellular network a preliminary order for crediting accounts associated with the intended recipients. See, for example, references to fixed price information, as in Fig. 2 and related text.

The consumer terminals 104 may be different from each other and may be contacted via various modes of transmission, including email, web pages, and others, according to consumer requirements. See, for example, at least Col. 13, lines 1-16, Col. 20, lines 56-67. See references to content delivery, at least Fig. 2, related text.

Goldhaber discloses, as in Figs. 1 and 7, database server, an account server, service or information server.

As per claims 11 and 12, Goldhaber discloses transmitting through the computer or cellular network a preliminary order for crediting accounts associated with the intended recipients. See, for example, references to fixed price information, as in Fig. 2 and related text.

Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldhaber et al. (US 5,794,210).

As per claim 7, Goldhaber does not specifically disclose that crediting an account associated with said certain recipient comprises the substeps of defining the time it has taken for said indication to be received and crediting said **account** by an amount which is inversely proportional to said time. Goldhaber discloses the use of time-sensitive incentives such as coupons, in addition to credits to an account. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Goldhaber to disclose time-sensitive credits, perhaps based on a subscriber's response time. One of ordinary skill in the art at the time the invention was made would have been motivated to extend Goldhaber to disclose time-sensitive credits, perhaps based on a subscriber's response time for the obvious reason that the value of

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information is often greater when the information is first posted. Goldhaber provides an example, Fig. 14, of information concerning a 1994 Explorer. Such information would likely be of less value as more time passes. Therefore, an advertiser may pay less and less as time passes.

As per claim 13, Goldhaber discloses method for distributing information or services through a computer or cellular network, as in claim 1, above.

Goldhaber **does not** specifically disclose crediting an account by (a) ranking the order in which said certain recipient provides the reception indication relative to other of said intended recipients; and (b) crediting said account associated with said certain recipient based on the order ranking. As noted previously, and now admitted prior art, it is well known to reward early responders.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Goldhaber to disclose (a) ranking the order in which said certain recipient provides the reception indication relative to other of said intended recipients; and (b) crediting said account associated with said certain recipient based on the order ranking, such as response time.

One of ordinary skill in the art at the time the invention was made would have been motivated to extend Goldhaber to disclose (a) ranking the order in which said certain recipient provides the reception indication relative to other of said intended recipients; and (b) crediting said account associated with said certain recipient based on the order ranking for the obvious reason that the value of information is often greater when the information is first posted. Goldhaber provides an example, Fig. 14, of information concerning a 1994 Explorer. Such information would likely be of less value as more time passes. Therefore, an advertiser may pay less and less as time passes.

(10) Response to Arguments

Second Ground of Rejection – 102(b) rejection of claims 1-6, 8-10.

Appellant argues, pages 6-7, Appeal Brief::

Goldhaber **does not** teach, nor suggest, transmitting "a preliminary order for crediting accounts" associated with the intended recipients, as required by the claims 1-6 and 8-12....Therefore, for the reasons stated above, Appellant respectfully submits that Goldhaber **does not** disclose each and every feature of claims 1-6 and 8-12,

The Examiner respectfully disagrees. Representative Claim 1 and its limitations are discussed below:

Claim 1 [preamble] A method for distributing information or services through a computer or cellular network, comprising the steps of:

composing a piece of information or service to be distributed through the computer or cellular network,

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A system ...advertisement or other "negatively priced" information distributed over a computer network such as the Internet. [abstract]

Historically, advertising has involved a battle of wits between advertiser and consumer. In the mass media, producers of products and services vie with each other to capture the attention of potential consumers, while those same consumers (although generally endorsing the idea of advertising as a way of keeping entertainment and information costs down) strive to evade as many advertising messages as they can. Consumers press the mute button on their TV remotes and "zap" advertisements by flipping between channels, they mentally tune out or "zap" radio commercials, they flip advertising pages of a newspaper or magazine without paying any attention to them, and they subscribe to non-commercial information and entertainment media. Rare indeed is the consumer who actually enjoys being at the receiving end of mass-media advertising. [Col. 1, lines 15-29, emphasis added].

In the traditional mass media advertising model, mass media (e.g., television networks, radio stations, newspapers and magazines) develop particular content of interest to certain classes of consumers. The mass media also develops and provides a mechanism to deliver the content to as many potential consumers as possible (e.g., over the air or by cable transmissions, by mass distribution of print media copies, etc.). The mass media may charge audience members for content delivery (e.g., magazine or newspaper subscription fees, cable television subscription fees, or "pay per view" fees), but mass media typically receives most of its revenue from advertisers. [Col. 1, lines 15-61, emphasis added].

FIG. 8 shows an example of the use of consumer interest profile 124 to target advertisements 68. In this example, an advertiser...creates *an ad 68* that appeals to certain consumers 64 but not others. In this schematic illustration, ad 68 created by advertiser 62 appeals primarily to consumers having certain preferences (these preferences indicated by the diamond shapes and the slanted stripes). [Col. 14, lines 17-23, emphasis added].

compiling a list of intended recipients;

specific target audience [abstract]

...allows advertisers to detach their messages from program content and explicitly **target** their audience... **Targeting** users may be provided by reference to a data base of digitally stored demographic profiles of potential users. Information can be routed to users based on demographics, and software agents can be used to actively seek out users on a digital network. [Abstract]

...a lingerie company may know that its products are purchased by a certain demographic group, e.g. mostly mid-to-upper class white women ages 18-35. ...Melrose Place (a television situation comedy aimed at young women) and to a young women's magazine--both of which appeal to young women in the socio-economic and age demographics the lingerie company wants to sell its product to. By linking its ads to content being delivered to an audience of mostly mid-to-upper class white women ages 18-35, the lingerie company can be assured that its advertising is delivered to the consumers most likely to purchase its products. [Col. 2, lines 36-49]

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Since all the ads on the list will be targeted to the consumer's needs, interests, and preferences, it is very likely that she would be inclined to view them even without a cash incentive....

...advertisers will simply provide ads to the service, explicitly delineate their target audience, and offer some form of compensation for time and attention directly to those viewers willing to "view" ads.

...The "stick" is an element of interactivity designed into the ad that requires the consumer to provide a response or otherwise interact with the ad (thus allowing the service to assure the advertiser that the consumer did indeed watch and pay attention). [Col. 5, lines 25-Col. 6, line 2, emphasis added]

**transmitting through the computer or cellular network a preliminary order
for crediting accounts associated with the intended recipients;**

For example, FIG. 2 schematically shows a transaction involving ... valuable information such as, for example, a television program, prerecorded music, magazine or newspaper articles, or a research report. In this example, consumers may request such information through consumer computers 104, and the information can be delivered to the consumers in digital form via the consumer computers and/or by other means. In this example, the consumers requesting and consuming such information are asked to compensate the providers of such information. FIG. 2 shows an information provider providing valuable information 50 with a "price tag" 52 stating how much the information costs, and requesting compensation in this amount (as signified by the open hand 54). Of course, the physical transaction shown in FIG. 2 is only for purposes of illustration-since in this example the actual transaction takes place electronically. In particular, an electronic "price tag" 52 (i.e., a request for payment) may be presented to the consumer's computer 104. [Col. 10, lines 9-38, emphasis added]

**releasing said piece of information or service so that said piece of information or
service becomes accessible to the recipients appearing on said list;**

...The consumer (or her software agent 110) may satisfy the request for payment by providing an appropriate amount of digital cash and/or by authorizing financial clearinghouse 108 to debit her account in the appropriate amount. Upon receipt of such payment or payment authorization, the information provider may release the valuable information 50 to the consumer (e.g., by transmitting it over network 102 and/or by providing consumer computer 104 with a decryption key or other information needed to release it from an information container or other protected form). [Col. 10, lines 9-38, emphasis added]

**as a response to an indication of a certain recipient having accessed said piece
of information or service, crediting an account associated with said certain
recipient.**

...As mentioned above, one possible payment arrangement is to provide direct payment in the form of digital cash 60(a) to the consumer's computer 104 in response to

the consumer's selection of the CyberCoin icon 62 (possibly as a condition on the consumer interacting with the advertisement and answering appropriate questions or providing requested information). Another possibility is for the consumer's computer 104 to interact with financial clearinghouse computer 108 to cause the financial clearinghouse compute to update financial database 110 it maintains so as to debit the advertiser's account and credit the consumer's account by the appropriate payment amount 60(b). [Col. 11, lines 33-43, emphasis added].

Third Ground of Rejection – 103(a) of claims 7 and 13 over Goldhaber.

In his remarks of 3 June and 13 September 2005, Appellant argued:

Contrary to the Examiner's position explained on pages 10-11 of the Office Action, Goldhaber's disclosure of coupons does not make obvious the claimed feature of crediting the account by an amount which is inversely proportional to the time. First of all, Goldhaber does not even suggest that its coupons are time-sensitive. And even assuming that Goldhaber were to suggest that the coupons were time-sensitive, it would not have been obvious to one of ordinary skill to take such an leap in logic to arrive at crediting the account by an amount which is inversely proportional to the time...

A "traverse" is a denial of an opposing party's allegations of fact.¹

The Examiner notified Appellant that his arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made.

Even if one were to interpret Appellants' arguments and comments as constituting a traverse, Appellants' arguments and comments do not appear to constitute an adequate traverse because Appellant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 706.07(a).

An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice

¹ Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."

of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

Since Appellant did not seasonably traverse the well known statement during examination, the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art.

In his after-final remarks and in his Appeal Brief, Appellant presented additional arguments concerning Official Notice and the obviousness rejection of claims 7 and 13. These arguments have been very carefully reviewed.

In response, the remarks do not contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art.

Appellant argues that the examiner's conclusion of obviousness is based upon improper hindsight reasoning.

In response, the Examiner respectfully submits that it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from Appellant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

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Appellant argues that there is no suggestion to combine the references.

In response, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Goldhaber discloses the use of coupons, which are time sensitive.


(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

James Zurita
Primary Examiner
Art Unit 3625
20 July 2007


JAMES ZURITA
PRIMARY EXAMINER

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